

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|---|---|----------------------|
| Expanding the Economic and Innovation |) | |
| Opportunities of Spectrum Through Incentive |) | GN Docket No. 12-268 |
| Auctions |) | |
| |) | |
| Incentive Auction Task Force and Media Bureau |) | MB Docket No. 16-306 |
| Seek Comment on Post-Incentive Auction |) | |
| Transition Scheduling |) | |

**OPPOSITION OF T-MOBILE USA, INC. TO
THE PETITION FOR RECONSIDERATION FILED BY
THE NATIONAL ASSOCIATION OF BROADCASTERS**

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OPPOSITION OF T-MOBILE USA, INC.

I. INTRODUCTION AND SUMMARY

T-Mobile USA, Inc. (“T-Mobile”) opposes the late-filed petition for reconsideration of the National Association of Broadcasters (“NAB”).¹ NAB’s petition is time barred and consideration of its claims would waste agency resources. The relief NAB seeks is not warranted on the merits and, if granted, will frustrate broadband investment and deployment. The FCC should reject NAB’s petition.

NAB filed a petition purporting to challenge the Media Bureau’s Post-Incentive Auction Transition Scheduling Plan. But the petition addresses the underlying 39-month deadline for broadcaster relocation from the 600 MHz band following the incentive auction, not the mechanics of its implementation. The FCC adopted the 39-month transition plan nearly three years ago and the deadline for NAB to have challenged this decision expired on September 14, 2014.² The U.S. Court of Appeals for the District of Columbia Circuit has upheld the

¹ Petition for Reconsideration of the National Association of Broadcasters, GN Docket No. 12-268, MB Docket No. 16-306 (Mar. 17, 2017), <http://bit.ly/2pk8nvw> (“Petition”).

² Opposition of Competitive Carriers Association, GN Docket No. 12-268, MB Docket No. 16-306 (Mar. 29, 2017), <http://bit.ly/2oX4ITl>.

Commission's 39-month timeline, and broadcast licensees are already working to meet it. NAB's petition is an impermissible collateral attack on the 39-month repacking timeline disguised as a petition for reconsideration of the Media Bureau's Post-Incentive Auction Transition Scheduling Plan.

NAB's petition also fails on its merits. Any implication that post-auction transition planning was an afterthought for the Media Bureau and the Incentive Auction Task Force belies the thousands of pages of evidence on the record that Media Bureau carefully analyzed before releasing multiple detailed documents outlining the repacking process.

Far from an afterthought, the Commission identified the 600 MHz as a critical component of the auction process at the earliest stages of decision making. Relocating legacy incumbents from the 600 MHz band clears the way for wireless operators to deploy next-generation wireless broadband service throughout the nation, including remote, rural and underserved areas of the country. T-Mobile, for one, plans to deploy advance LTE services using the 600 MHz beginning *this year*. T-Mobile has said it intends to use the highly favorable propagation characteristics of low-band 600 MHz spectrum to contest markets long dominated by just one or two wireless providers and bring the benefits of increased competitive rivalry to consumers throughout the United States.³ T-Mobile deployed its 700 MHz spectrum in record time and that low band spectrum has been key to its ability to compete, including by expanding coverage to rural areas and strengthen coverage in urban areas. Rapid deployment of the 600 MHz band will allow T-Mobile to further expand coverage in areas where it does not hold 700 MHz licenses and further strengthen coverage and capacity throughout its coverage area. More broadly, the infusion of

³ Press Release, T-Mobile, T-Mobile Celebrates 4 Years as a Public Company with Industry Leading Customer and Financial Growth and Game-Changing Spectrum Auction Results (Apr. 24, 2017), <http://t-mo.co/2pdTs58>.

wireless broadband investment into the nation's economy from T-Mobile and other 600 MHz auction winners not only promises faster wireless broadband performance and improved coverage, but also new opportunities for economic growth and job creation.

The Commission must dismiss NAB's petition. NAB's petition arrives more than 900 days past the deadline for reconsideration. Quickly dismissing this petition will avoid delay and uncertainty for the repacking process and promises to accelerate the deployment of high speed broadband by removing barriers to innovation and investment.

II. NAB'S PETITION IS TIME BARRED.

a. NAB's Petition is a Late-Filed Petition for Reconsideration.

NAB's petition is time barred. Petitions for reconsideration of Commission action "must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of."⁴ The Commission will only extend this 30-day deadline in "extraordinary" or "highly unusual" circumstances.⁵ Extension of this deadline without evidence of extenuating circumstances would exceed the "lawful authority" of the Commission.⁶

No extraordinary or unusual circumstances exist. The Commission adopted the 39-month deadline that NAB now challenges on May 15, 2014, and the Commission's Order appeared in the Federal Register on August 15, 2014.⁷ Petitions for reconsideration were due by September 14, 2014 – 916 days before NAB filed its petition.⁸ NAB had both notice of the 2014

⁴ 47 U.S.C. § 405(a); *see also* 47 C.F.R. § 1.429(d).

⁵ *See Reuters Ltd. v. F.C.C.*, 781 F.2d 946, 951-52 (D.C. Cir. 1986) (citing *Gardner v. F.C.C.*, 530 F.2d 1086, 1091-92 & n.24 (D.C. Cir. 1976)).

⁶ *See id.*

⁷ *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014) ("*Incentive Auction Order*").

⁸ *See* 47 C.F.R. § 1.429.

rulemaking – indeed it participated in the proceeding – and ample opportunity to challenge the 39-month deadline. NAB could have timely filed a petition for reconsideration prior to the September 2014 deadline, just as several other entities did. Or NAB could have joined in Sinclair Broadcasting Group’s challenge of the Commission’s 39-month repacking deadline before the U.S. Court of Appeals for the District of Columbia Circuit, a case in which NAB was a petitioner.⁹ But NAB did none of these things. On the contrary, NAB supported a *shorter* transition period than the Commission ultimately adopted. As the D.C. Circuit Court of appeals noted when it upheld the Commission’s 39 month deadline, NAB asked the Commission to adopt a *30-month* deadline for the repacking process following the incentive auction.¹⁰ NAB does not attempt to explain its extraordinary delay in challenging the Commission’s 39-month deadline. The Commission must therefore dismiss NAB’s petition as an untimely petition for reconsideration.

b. Commission Precedent Prohibits Untimely Collateral Attacks on Commission Action.

NAB’s petition attempts to use a recent Media Bureau release related to the repacking process to avoid Commission rules and policies requiring timely challenges to decisions the Commission adopts.¹¹ As the Commission has held, “indirect challenges to decisions that were

⁹ See *Nat’l Ass’n of Broadcasters v. F.C.C.*, 789 F.3d 165 (D.C. Cir. 2015).

¹⁰ See Comments of the National Association of Broadcasters, GN Docket No. 12-268, at 50 (Jan. 25, 2013), <http://bit.ly/2nngPbm>.

¹¹ See *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, Public Notice, MB Docket No. 16-306, GN Docket No. 12-268, DA 17-107 (Jan. 27, 2017), <http://bit.ly/2mK1Q8n> (“*Scheduling Plan Public Notice*”).

adopted in proceedings in which the right to review has expired” are “impermissible collateral attacks” on the original decision and thus “untimely.”¹²

Despite occasional references to the Media Bureau’s notice on the mechanics of the transition process the Commission adopted nearly three years earlier, NAB directs its critique to the 39-month deadline. NAB says the “most problematic aspect of the transition plan” is the Bureau’s adherence to the “39-month deadline the Commission adopted.”¹³ NAB refers over and over again to the 39-month deadline as “arbitrary and unfounded”¹⁴ and claims the transition plan is “predicated on perpetuating the fiction that compliance with the arbitrary 39-month deadline is possible.”¹⁵ NAB also prospectively asserts that the Media Bureau will refuse to waive deadlines for relocating broadcasters to promote the transition plan adopted in 2014.¹⁶ NAB’s narrow fixation on the 39-month deadline in this petition demonstrates that the petition is an untimely and impermissible collateral attack on the 39-month repacking deadline.

NAB also fails to make a credible case for its stated basis for reconsideration. NAB cites section 1.429 of the Commission’s rules in support of its petition on grounds that “new facts are available regarding the repack.”¹⁷ No such facts exist. Section 1.429 allows reconsideration of a final action based on “facts or arguments which have not previously been presented to the Commission” when there are “events which have occurred or circumstances which have changed

¹² See, e.g., *Amendment of Section 73.622(I), Post Transition Table of DTV Allotments Television Broadcast Stations (Seaford, Delaware)*, Memorandum Opinion and Order on Further Reconsideration, 29 FCC Rcd 4769 ¶ 9 (2014) (“*Seaford, DE MO&O*”).

¹³ Petition at 5.

¹⁴ See *id.* at ii, 5.

¹⁵ See *id.* at 2, 7.

¹⁶ *Id.* at 7.

¹⁷ *Id.* at 2.

since the last opportunity to present such matters to the Commission.”¹⁸ The Commission may also determine that reconsideration is required in the public interest.¹⁹ But NAB has provided no new facts regarding the repack. Instead, NAB challenges the Commission’s 2014 decision to establish intermediate milestones for relocation.²⁰ NAB also complains about the Commission’s 2014 decision to address potential disruptions to the transition schedule on a case-by-case basis.²¹ And NAB criticizes the balance the Commission’s 2014 decision struck between making spectrum available for wireless broadband use and allowing legacy operations additional time to wind up their affairs.²² Even if NAB’s arguments had merit (they do not), none of these claims rest on new facts. On the contrary, the mechanics of the broadcast transition and the resources available to meet the challenges relocating broadcasters may face have been known for years. And NAB’s public interest arguments, such as they are, merely repeat old critiques regarding

¹⁸ 47 C.F.R. § 1.429.

¹⁹ *Id.*

²⁰ Compare Petition at 6 (criticizing the adoption of procedures for adopting varying, intermediate deadlines pursuant to context-sensitive information about broadcast conditions) *with Incentive Auction Order*, 29 FCC Rcd ¶ 566 (holding that “a phased construction schedule, with the assignment of varying construction deadlines within this 36-month period, is most likely to ensure a successful transition for all broadcasters.”).

²¹ Compare Petition at 7 (criticizing a case-by-case waiver process in lieu of a blanket extension) *with Incentive Auction Order*, 29 FCC Rcd ¶ 584 (deciding to “allow stations, on a case-by-case basis, to seek [grants of special temporary authority] for technical solutions that are similar to those permitted during the DTV transition”).

²² Compare Petition at 7 (criticizing the 39-month deadline as “fundamentally imbalanced”) *with Incentive Auction Order*, 29 FCC Rcd ¶ 561 (holding that “no station with a new channel assignment will be permitted to operate on its pre-auction channel after the end of the Broadcast Construction Period” on grounds that “[t]his approach will provide sufficient flexibility to both broadcasters and the Commission to ensure a successful, expeditious transition, while minimizing disruption to consumers and providing appropriate certainty to the wireless industry”).

NAB's dim view of the viability of completing the repacking process in 39 months that the Commission previously considered and rejected.²³

The Commission's rules impose time limits to conserve limited agency resources and to promote efficiency and certainty for the public. Petitions that attempt to subvert these principles frustrate finality and are "properly denied."²⁴

III. THE POST-AUCTION TRANSITION PLAN IS GROUNDED IN CAREFUL ANALYSIS OF A ROBUST RECORD.

NAB's petition also fails on the merits. NAB's claims that the Commission "did little or nothing to prepare for the repack" or that the Commission somehow "viewed the repack as an afterthought" lack any foundation.²⁵ An extensive record supports the transition plans developed by the Media Bureau and Incentive Auction Task Force. More than 100 filings were submitted in the FCC's 2016 Post-Incentive Auction Transition docket by at least 30 different stakeholders. NAB itself filed a dozen times in this docket. And these numbers do not capture the hundreds of other filings submitted in the original incentive auction docket that analyzed the transition process. Throughout the five years since Congress authorized the incentive auction,²⁶ the Media

²³ Compare *Ex Parte* Notice of Rick Kaplan, General Counsel and Executive Vice President, Legal and Regulatory Affairs, National Association of Broadcasters to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, at 1 (Mar. 9, 2016), <http://bit.ly/2orOP45> ("there is little or no chance every station will transition within 39 months"), and Reply Comments of the National Association of Broadcasters, GN Docket No. 12-268, MB Docket No. 16-306, at 12-13 (Nov. 15, 2016), <http://bit.ly/2oPqCrk> ("it is clear that there are significant questions as to whether or not the Commission's 39-month deadline is achievable"), with Petition at 2 (the transition plan is "predicated on perpetuating the fiction that compliance with the arbitrary 39-month deadline is possible"). Anecdotal evidence suggests many broadcasters are eager to participate in the relocation process. For example, numerous broadcasters have told T-Mobile they intend to move earlier than their planned transition deadlines. And despite extensive outreach by T-Mobile to many members of the broadcast community, no broadcast licensee has informed T-Mobile of an anticipated need to seek a waiver of the transition deadline.

²⁴ See, e.g., *Seaford, DE MO&O*, 29 FCC Rcd ¶ 9.

²⁵ Petition at 4-5.

²⁶ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012).

Bureau sought comment regarding elements of the transition and released at least two dozen documents on the transition plan that sought to refine the plan while methodically explaining the basis for each element of the plans that began to emerge through this years-long notice-and-comment process.²⁷

a. An Exhaustive Record Supports the Commission’s Transition Plan.

Stakeholders from across the wireless industry participated in the proceeding to develop the repacking process. T-Mobile alone filed at least two dozen documents in the record on the relocation of the broadcasters and the need for rapid deployment of wireless broadband on the 600 MHz band.²⁸ T-Mobile’s filings included a 2015 study of the broadcast relocation process by experienced engineering firms Broadcast Tower Technologies, Inc. (“BT Ti”) and Hammett & Edison, Inc. (“Hammett & Edison”).²⁹ The BT Ti and Hammett & Edison study offered an “exhaustive review of television broadcast license facilities and in-depth, nationwide analysis of

²⁷ See, e.g., *FCC Announces Workshop on Issues Surrounding the Reassignment of TV Stations After the Incentive Auction*, Public Notice, 28 FCC Rcd 12984 (2013), <http://bit.ly/2pki7pE>; *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, Public Notice, 30 FCC Rcd 11701 (2015), <http://bit.ly/2owfYSE>; *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858 (MB 2017).

²⁸ See, e.g., *Ex Parte* Notice from Trey Hanbury, Counsel for T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252, at 1 (July 29, 2016) (outlining discussions with FCC staff and members of the Incentive Auction Task Force regarding the “importance of an efficient, phased reconfiguration of the 600 MHz band.”), <http://bit.ly/2mJUOS>; see also *Ex Parte* Notice from Davina Sashkin, Counsel for T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, MB Docket No. 16-306 (Oct. 17, 2016) (summarizing meetings between T-Mobile and FCC staff and members of the Incentive Auction Task Force discussing T-Mobile’s recommendations for the post-auction transition plan structure), <http://bit.ly/2nb4FCH>.

²⁹ The final report was more than 50 pages supported by another 350 pages of data. See *On Time and On Budget: Completing the 600 MHz Incentive Auction Repacking Process Within the FCC’s 39-Month Relocation Deadline and the Budget Established by Congress*, T-MOBILE, BROADCAST TOWER TECHNOLOGIES, HAMMETT & EDISON (filed as an attachment to the *Ex Parte* Notice of T-Mobile to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252 (Feb. 17, 2016)), <http://bit.ly/2nAvVeJ>.

available resources for the major stages of repacking.”³⁰ CCA also commissioned a study of the repacking process from Professor Peter Cramton, an international authority on spectrum auctions generally and incentive auctions specifically.³¹

Indeed, for the last three years wireless providers, tower companies, broadcasters, trade associations, and industry vendors have flooded the record with data and perspectives on the relocation of the broadcasters from the 600 MHz band. Frequent filers included American Tower Company,³² AT&T,³³ CTIA,³⁴ CCA,³⁵ and E.W. Scripps.³⁶ NAB, too, submitted studies and comments pertaining to the repacking process.³⁷ Indeed, a simple keyword search for the word “repacking” in the database for just one of the Commission’s incentive auction dockets

³⁰ *Id.* at 1.

³¹ For example, Professor Cramton co-invented the spectrum auction design used all over the world, including in Canada, Australia, and Europe. *See* Peter Cramton, Hector Lopez, David Malec & Pacharasut Sujarittanonta, *Design of the Reverse Auction in the Broadcast Incentive Auction*, attached to *Ex Parte* Letter from Preston Padden, Executive Director, Expanding Opportunities for Broadcasters Coalition to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268, AU Docket No. 14-252 (June 15, 2015); *see also* Peter Cramton, Darrell Hoy & David Malec, *Repacking of Broadcasters Can Be Completed in 39 Months or Less*, attached to *Ex Parte* Letter from Rebecca Murphy Thompson, EVP & General Counsel, Competitive Carriers Association to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (Feb. 10, 2016).

³² *See, e.g., Ex Parte* Notice from Christine Crowe and Timothy Cooney, Counsel for American Tower Company to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (Mar. 21, 2016); Letter from Christine Crowe and Timothy Cooney, Counsel for American Tower Company to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (Nov. 9, 2015).

³³ *See, e.g., Ex Parte* from Brian Benison, AT&T, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (Dec. 18, 2015).

³⁴ Reply Comments of CTIA, GN Docket No. 12-268, MB Docket No. 16-306 (Nov. 15, 2016), <http://bit.ly/2pEAeTX>.

³⁵ Comments of Competitive Carriers Association, GN Docket No. 12-268, MB Docket No. 16-306 (Oct. 31, 2016), <http://bit.ly/2oNcoXJ>.

³⁶ *See* Comments of the E.W. Scripps Company, MB Docket No. 16-306, GN Docket No. 12-268 (Oct. 31, 2016).

³⁷ *See, e.g.,* Comments of the National Association of Broadcasters, MB Docket No. 16-306, GN Docket No. 12-268 (Oct. 28, 2016), <http://bit.ly/2n4HZmS>; *Ex Parte* Notice of Rick Kaplan, General Counsel and Executive Vice President, Legal and Regulatory Affairs, National Association of Broadcasters to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (Mar. 21, 2016), <http://bit.ly/2npcDIA>.

produces more than 1,100 results. NAB’s argument that the Commission’s transition plans are baseless ignores the thousands of pages on the record prepared in large measure by the very entities that will implement the relocation and deploy wireless broadband to the public using the 600 MHz spectrum.

b. The Commission’s Transition Plan Rests on Careful Analysis of the Record.

The Commission undertook an exhaustive process that resulted in a ten-phased plan for the transition based on logical interrelationships among broadcast stations that will occur over a lengthy, 39-month period.³⁸ The volume and detail of the Commission’s releases pertaining to the repacking process undermine NAB’s assertion that the Commission did “little or nothing” to anticipate challenges or prepare for the repack.³⁹

Since adopting *Incentive Auction Order*, the Commission has performed extensive analysis of the post-auction transition process and released detailed plans and guidance based on the analysis developed from the public record. The Media Bureau repeatedly sought comment on various aspects of the repacking process from stakeholders.⁴⁰ And the Media Bureau, along with the Incentive Auction Task Force, reviewed the record and worked with experts – an undertaking NAB itself praises as a “considerable effort”⁴¹ – to develop the transition plan.⁴² Since then, the Commission has released hundreds of pages of guidance regarding the scheduling

³⁸ See *Scheduling Plan Public Notice*.

³⁹ Petition at 4-5.

⁴⁰ See, e.g., *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 31 FCC Rcd 10802 (MB 2016).

⁴¹ Petition at 5-6.

⁴² *Scheduling Plan Public Notice*.

of the transition, reimbursement for broadcasters, timelines for each relocating station, and options for stations that experience issues during the relocation process.⁴³

The Post-Incentive Auction Transition Scheduling Plan outlines the Commission rationale for assigning relocating broadcasters to ten transition phases as soon as the final channel assignments are determined. The Media Bureau explained that “[l]aunching an organized, phased schedule at the earliest opportunity will provide broadcasters, equipment manufacturers and other vendors and consultants, wireless providers, and television viewers with certainty and stability.”⁴⁴ To carry out the plan, the Media Bureau developed a Phase Assignment Tool to analyze the needs of each relocating station, the complexity of the necessary construction, and myriad other factors to assign each relocating station to the phase that will best facilitate the repacking process. The Media Bureau’s Phase Assignment Tool adopted eight constraints and four objectives that each phase-assignment solution must meet. Among other things, these constraints and objectives direct that all stations within a DMA will be assigned to no more than two different transition phases; they also require that the difference between the number of stations in the largest transition phase and the number of stations in the smallest transition phase must be no more than 30 stations.⁴⁵ The Media Bureau considered the location of the stations and determined that no stations in Canada can be in a transition phase prior to the third phase. And the Media Bureau considered the complexity of each station’s particular circumstances by, for example, directing that no station in the “complicated” category would be assigned to Phase 1, which has the shortest deadline.⁴⁶ The Media Bureau also adopted

⁴³ See, e.g., *Post-Auction Transition*, FCC, <http://fcc.us/2ooqKiC> (last updated Apr. 13, 2017).

⁴⁴ *Scheduling Plan Public Notice* ¶ 11.

⁴⁵ *Id.* ¶ 14.

⁴⁶ *Id.*

constraints to address issues of interference. For example, it prohibited stations from causing more than two percent new pairwise interference to another station during the transition and capped the number of linked stations in any given phase to 125.⁴⁷

The Media Bureau created a Phase Scheduling Tool that determines the amount of time necessary for each phase to complete the repacking process and sets construction and testing deadlines for the stations in each phase accordingly. The Media Bureau explained that while “the tool produces reasonable time estimates based on the detailed inputs,” flexibility remains to account for factors “that may warrant deadline adjustments, such as the relative length of the testing period for each phase or seasonal consideration.”⁴⁸ For example, the Media Bureau explained that “the phase completion date may be moved later if an early phase consisting primarily of stations in northern regions of the United States is projected to end in the middle of winter.”⁴⁹

The agency’s detailed analysis and preparation for a wide variety of contingencies affecting the transition flatly contradict NAB’s claim that the agency did “little or nothing to prepare for the repack.”⁵⁰ NAB’s belated, repetitive challenge to the Commission’s 39-month deadline does not make the falsehoods on which NAB’s claims rest any more truthful than when these challenges were first raised by other parties nearly three years ago.⁵¹

⁴⁷ *Id.*; *see also id.* ¶ 26.

⁴⁸ *Id.* at App. A ¶ 46.

⁴⁹ *Id.*.

⁵⁰ Petition at 4-5.

⁵¹ NAB continues to misstate facts in its public comments about the transition. *See* Carolyn Giardina, *NAB CEO Gordon Smith on Broadcasters’ Agenda In the Trump Era*, THE HOLLYWOOD REPORTER (Apr. 21, 2017), <http://bit.ly/2p1necV> (stating that “more than 1,000 TV stations” will be “forced to move”); Press Release, National Association of Broadcasters, NAB Statement on Incentive Auction Results (Apr. 13, 2017), *available at* <http://bit.ly/2pw132t> (expressing concern that the number of TV stations to be moved is “far more than originally anticipated”). Contrary to NAB’s claims, the repacking process will

c. The 600 MHz Spectrum is Critical for the Expansion of High-Speed Wireless Broadband.

The wireless industry and Commission agree that the 600 MHz spectrum won in the incentive auction promises to support increased speed and coverage for truly nationwide wireless networks. Low-band 600 MHz spectrum penetrates obstacles better and travels longer distances than higher-band spectrum – features that improve in-building coverage and reduces deployment costs.⁵² The rapid deployment of this spectrum will allow wireless providers to meet the ever-increasing demands of wireless consumers wherever they are. Chairman Pai recognized the importance of timely clearing the 600 MHz spectrum at the close of bidding when he stressed the “imperative” of “mov[ing] forward with equal zeal to ensure a successful post-auction transition, including a smooth and efficient repacking process.”⁵³ Both Commissioners Clyburn and O’Rielly have likewise stressed the need for rapid assignment of additional spectrum to support wireless services,⁵⁴ and Commissioner Clyburn has voiced strong support for Commission

involve 957 stations. *See* Press Release, FCC, FCC Announces Results of the World’s First Broadcast Incentive Auction (Apr. 13, 2017), <http://bit.ly/2phZhyE>. This number is lower than the pre-auction estimates, which were at times as high as 1,300 stations that would need to be moved. *See, e.g.*, Press Release, Rohde & Schwarz, NAB 2017: Sinclair Broadcast Group Preps for Repack with New Rohde & Schwarz Transmitter (Apr. 18, 2017), <http://bit.ly/2pwjdyy> (citing a Sinclair Broadcast estimate that 1,200 stations would be required to transition); Lydia Beyoud & Kyle Daly, *As Spectrum Auction Unfolds, Big Questions Loom*, BLOOMBERG BNA (Apr. 7, 2016), <http://bit.ly/2pf2Cfy> (citing sources predicting that as many as 1,300 stations could be affected by the repacking process).

⁵² Coleman Bazelon & Giulia McHenry, *Mobile Broadband Spectrum: A Vital Resource for the U.S. Economy*, THE BRATTLE GROUP 3 (May 11, 2016), <http://bit.ly/1PKEM5F> (“Since technologies for mobile broadband and other related services are currently best suited for frequencies below 3 GHz, spectrum in this range is particularly scarce and valuable.”).

⁵³ Press Release, FCC, Statement of Chairman Ajit Pai On the Completion of the Incentive Auction and the Start of the Post-Transition Period (Apr. 13, 2017), <http://bit.ly/2ovd8Oy>.

⁵⁴ *See, e.g.*, *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, Statement of Commissioner Michael O’Rielly (2016), <http://bit.ly/2qbOqDr> (“we must aggressively push forward. It’s the only way we will create the necessary spectrum pipeline for both future licensed and unlicensed use”).

policies to expand high-speed wireless throughout the entire country.⁵⁵ As explained by Steven K. Berry, President and CEO of the Competitive Carriers Association, clearing the way for wireless operators to deploy 600 MHz spectrum will prove “vital to expanding mobile broadband coverage into underserved areas.”⁵⁶

The more quickly broadcast stations transition off the 600 MHz spectrum, the more quickly T-Mobile and other wireless operators and new entrants can establish or expand advanced LTE coverage to “every corner of the country” and “strengthen existing LTE coverage and increase capacity to meet customers’ growing demand for mobile data.”⁵⁷ For its part, T-Mobile has committed to deploying on its 600 MHz spectrum this year, including in remote areas of the country where consumers often have few choices for high-speed LTE wireless service.⁵⁸ Meanwhile, Samsung, Qualcomm, Ericsson, Nokia and other vendors have already spent considerable financial and human capital developing standards for equipment to use the 600 MHz band.⁵⁹ And numerous major manufacturers have already announced the release of

⁵⁵ See, e.g., *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, Statement of Commissioner Mignon Clyburn (2016) <http://bit.ly/2p1IjDO> (“When we think about what the goals of our next generation networks should be, ubiquity and affordability have to be a part of the success matrix, for we must be sure that we are not just giving those who already have the most even more, while doubling down and widening the digital divide for those with none or not enough”).

⁵⁶ Testimony of Steven K. Berry, President and Chief Executive Officer, Competitive Carriers Association, Before the U.S. House of Representatives Committee on Energy and Commerce Subcommittee on Communications and Technology, *Broadband: Deploying America’s 21st Century Infrastructure* (Mar. 21, 2017), <http://bit.ly/2qbuekY>.

⁵⁷ Press Release, T-Mobile, T-Mobile’s Spectrum Haul is a Game Changer for Wireless Consumers (Apr. 13, 2017), <http://t-mo.co/2o909RQ>.

⁵⁸ *Id.*

⁵⁹ See, e.g., *New WI: US 600 MHz Band for LTE*, T-Mobile, R4-1700435, <http://bit.ly/2qfHVzy> (T-Mobile proposal for new LTE band submitted in Feb. 2017); *New WI: US 600 MHz Band for LTE*, T-Mobile, RP-170051, <http://bit.ly/2q8GUg7> (Revised Mar. 2017 proposal which was adopted). Numerous related proposals were submitted by companies such as Ericsson, Intel, Nokia, Qualcomm, Samsung, Skyworks at the 3GPP April meeting and many were approved. *3GPP TDocs (written contributions) at meeting*, 3GPP, <http://bit.ly/2qftlrK> (last updated Apr. 18, 2017).

products that support 600 MHz broadband deployment and will be available this year.⁶⁰

Dismissal of NAB's untimely, repetitive petition for reconsideration will help accelerate the repacking process and ensure rapid deployment of advanced wireless broadband services in the 600 MHz band in rural and urban areas throughout the country.

IV. CONCLUSION

NAB's petition is an untimely petition for reconsideration of the Commission's 39-month repacking deadline. NAB's petition does not address the Media Bureau's recently adopted Post-Incentive Auction Transition Scheduling Plan, but rather uses the Bureau's public notice to revisit arguments about the 39-month transition NAB seems to wish it had made three years earlier. Even if NAB's petition were not time barred, it would fail on the merits. Claims that the Commission's post-auction transition plan were an "afterthought" are belied by the years of work the Commission has done developing and perfecting a plan that carefully balances competing goals and priorities of the Spectrum Act, based on a detailed record developed in this proceeding. The Commission must dismiss NAB's petition.

⁶⁰ Jim Tran, *Qualcomm Technologies Leading the Pack to Help Make 600 MHz Mobile Devices a Reality*, QUALCOMM: ONQ BLOG (Apr. 25, 2017), <http://bit.ly/2oMrKth> (explaining Qualcomm's support for "early launches of 600 MHz-capable 4G multimode/multiband devices" and confirming Qualcomm's "support of 600 MHz in the Snapdragon X16 LTE modem," which is featured in the advanced Snapdragon 835 mobile platform"); Press Release, Ericsson, Inc., Ericsson 600 MHz Products Ready in Q3 2017 (Mar. 30, 2017), <http://bit.ly/2oMzD1y> (announcing that Ericsson's "600 MHz suite of products will be ready for commercial deployment by Q3 2017" and explaining how the "new 600 MHz low-band spectrum allows operators to extend and enhance coverage by utilizing low band radio wave propagation," which will "drastically improve[e]conomics" while "enable[ing] a more competitive" wireless market and "ultimately a better choice of wireless service for customers"); Press Release, Nokia, Nokia Completes First Pre-standard 600 MHz LTE Call Using Commercially Available Hardware (Mar. 23, 2017), <http://nokia.ly/2oJOOId> (announcing pre-standard call completion milestones and explaining how "Nokia has been doing the necessary development, testing and software creation over the last several quarters" and is "ready to work from day one with those customers who want to bring 600 MHz to market").

Respectfully submitted,

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